IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

S.T.R. No. 94 of 2003
(Old No. 1513 of 1981)

Date of decision :-28-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-28-7-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Sales Tax Revision No. 94 of 2003
(Old No. 1513 of 1991)

The Commissioner
Sales Tax U.P. Lucknow ….Applicant/Revisionist
Versus
S/s Durga Industries
Khatima, Nainital …..Respondent

Sri Pitamber Maulki learned Addl. Advocate General for the revisionist.

Hon'ble J. C. S. Rawat, J.

1. This revision has been directed against the judgment and order dated 30.07.1991 passed by the Sales Tax Tribunal, Bench Haldwani, Haldwani.

2. Brief facts of the case are that the assessee-M/s Durga Industries was a rice mill, which had been exempted under section 4A of the U.P. Sales Tax Act for a period of five years i.e. from 1983 to 1988. During assessment year 1986-87, it was found that the assessee had sold rice for which form 3(c)(2) of the Act was issued by him and the same was obtained from the Revenue. But the unit of the seller was exempted from the tax. Thereafter, the Assessing Authority issued a notice under section 15A(1)(L) of the Act for issuing the false certificate or declaration by reason of which a tax on sale or purchase ceases to be livable under this Act or the rules made thereunder. The Assessing Authority after hearing the assessee-dealer had imposed a penalty upon the assessee. Feeling aggrieved by this, the assessee preferred the second appeal under section 9 of the Sales tax Act and the same was dismissed vide order dated 30.03.1991. The assessee-dealer feeling aggrieved by this preferred an appeal under section

10 of the Sales Tax Act and the Tribunal allowed the said appeal vide its order dated 30.07.1991. The learned Tribunal had held that there was no mensrea to get the tax evaded by issuing form 3C(2) specially when the assessee had furnished the details of form 3C(2) for obtaining new forms before the assessing authority.

3. The department feeling aggrieved by the order of the learned Tribunal preferred revision before the Allahabad High Court from where it has been received by transfer under the U.P. Reorganization Act, 2000, for its disposal.

4. The notices were sent to the assessee, but inspite of service of notice none is appearing on his behalf. I have gone through the entire record with the help of the learned Addl. Advocate General.

5. The only question of law involved in the revision is that “whether the learned Tribunal was justified in setting aside the penalty imposed by the Assessing Authority under section 15A(1)(L) despite the fact that the assessee had issued the form no.3C(2) of the Act even from the transaction where it had been actually not paid any tax.

6. Learned Addl. Advocate General contended that the learned Tribunal was not legally justified in holding that there was no mensrea to evade the tax upon the assessee. It was further contended that particularly in the taxation law the mensrea does not play an important part while imposing the penalty. It is settled position of law that in cases of penalty where the doubt is there, the interpretation has to be in favour of the person to be punished. The law has to be interpreted strictly and in case two interpretations are possible the interpretation in

favour of the suffering party has to be given. Section 15A(1)(L) of the Sales Tax Act is as follows:-

> ***"15A- Penalties in certain cases*** *(1) If the Assessing Authority is satisfied that any dealer or other person*
> *(a) ……..*
> *(b) …….*
> *(1) issues or furnishes a false certificate or declaration by reason of which a tax on sale or purchase ceases to be leviable under this Act or the Rules made thereunder;*
> *(m) ……."*

7. The significant word in that section is 'false certificate'. Now, I have to see what is the meaning of the word 'false' and whether the word 'false' denotes the mensrea or not. The expression *"making a false document"* means that a person is said to make a false document who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document. Thus, the word 'false' also includes dishonestly and frequently also. The matter came up for consideration before the Hon'ble Apex Court in **Central Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore & others 1980 (1) SCC 71 & AIR 1980 SC 346** in which a question arose for consideration was whether the Assistant Commissioner of Sales Tax was right in imposing penalty on the assessee for not showing the amount of freight as forming part of the taxable turnover in its returns. The Assessing Authority imposed the penalty under the relevant section of the Sales tax Act on the ground that the assessee had furnished the false returns by not including the amount of freight in the taxable turnover disclosed in the returns. The Hon'ble Apex Court had held that it is difficult to see how the assessee could be have filed 'false' returns, when what the assessee did, namely, not including the amount of freight in the taxable turnover was under a bonafide

belief that the amount of freight did not form part of the sale price and was not includible in the taxable turnover. Sale price and was not includible in the taxable turnover. The contention of the assessee throughout was that on a proper construction of the definition of ‘sale price’ the amount of freight did not fall within the definition and was not liable to be included in the taxable turnover. The Hon’ble Apex court had also held that the act requires is that the assessee should have filed a ‘false’ return and a return cannot be said to be ‘false’ unless there is an element of deliberateness in it. It is possible even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and there is no responsible explanation forthcoming from the assessee for such want of care, the court may, in given case, infer deliberations and the return may be liable to be branded as a false return. But where the assessee does not include a particular item in the taxable turnover under a bonafide belief that he is not liable so to include it, it would not be right to condemn the return as a false return inviting imposition of penalty. The Apex Court also relied upon a decision passed in Hindustan Steel Ltd. Vs. State of Orissa 1970 (25) STC 211 wherein it has been held that “even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute. In those circumstances, the Apex Court held that the said return filed by the assessee was not a ‘false’ return and the penalty imposed by the Assessing Authority was set aside.

8. Apart this, the assessee was giving the details while obtaining form under section 3C(2) of the Act and if there was any doubt to the department, it would have refused to provide the form 3C(2). The department had not objected for the issuance of the form 3C(2) and as such it cannot be held that it was a deliberate act on the part of the assessee. The unit of the assessee was exempted for five years and there was no question of evasion of tax.

9. In view of the foregoing discussion, I am of view that the learned Tribunal was justified in setting aside the penalty imposed by the Assessing Authority. Thus, in the facts and circumstances of the case the findings recorded by the Tribunal did not require any interference. There is no error of law committed by learned Sales Tax Tribunal. As such, the revision is liable to be dismissed. Therefore, the revision is dismissed accordingly.

(J. C. S. Rawat, J.)

Dated 28.07.2006
LSR